

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
CHRISTOPHER MERCED,

Plaintiff,

9:06-CV-1374
(GLS)(GHL)

v.

GLENN S. GOORD, *et al.*,

Defendants.

APPEARANCES:

CHRISTOPHER MERCED
Plaintiff, *pro se*

GARY L. SHARPE
U.S. DISTRICT JUDGE

DECISION and ORDER

By prior Decision and Order of this Court, *pro se* plaintiff Christopher Merced was afforded the opportunity to file an amended complaint if he wished to avoid dismissal of this action. Dkt. No. 4. At plaintiff's request, the deadline for filing the amended complaint was extended to March 13, 2007. Dkt. No. 5.

Thereafter, by letter dated January 9, 2007, plaintiff requested that this action be dismissed without prejudice. Dkt. No. 6. Plaintiff states in his letter that he believes that his claims should be pursued in the New York Court of Claims and were not properly filed in this Court. *Id.*

Rule 41(a)(1) of the Federal Rules of Civil Procedure provides in relevant part as follows:

[A]n action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, which ever first occurs,....

As noted, plaintiff has not filed an amended complaint in accordance with the Court's prior Decision and Order and, accordingly, none of the defendants have been served with process. Plaintiff is therefore entitled to dismiss this action.

Plaintiff also seeks a refund of any payments made to date in satisfaction of the filing fee for this action, and a cancellation of his obligation to pay the balance of that filing fee. Dkt. No. 6. This request is denied. Pursuant to the Prison Litigation Reform Act ("PLRA"),¹ 28 U.S.C. § 1915(b), plaintiff, in seeking *in forma pauperis* status, agreed to pay the full \$350.00 filing fee for this action, regardless of the outcome. See *Lebron v. Russo*, 263 F.3d 38, 41-42 (2d Cir. 2001) (per curiam) (construing identical language of the PLRA as it applies to appellate filing fees).

WHEREFORE, based upon the above, it is hereby

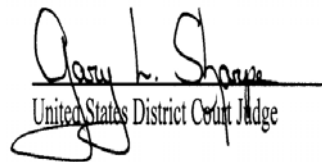
ORDERED, that this action is dismissed without prejudice pursuant to plaintiff's request (Dkt. No. 6), and it is further

ORDERED, that plaintiff's request for relief from his obligation to pay the filing fee is denied, and it is further

ORDERED, that the Clerk serve a copy of this Order on plaintiff by regular mail.

IT IS SO ORDERED.

Dated: April 20, 2007
Albany, New York



United States District Court Judge

¹ Pub.L. No. 104-134, 110 Stat. 1321.